THE HIGH COURT OF UTTRANCHAL AT NAINITAL

Appeal from Order No. 203 of 2001.
(Old FAFO No. 440 of 1982)

1. Smt. Chanchla Devi widow of Late Niyak Tej Singh,
2. Keshar Singh S/O Late Niyak Tej Singh,minor through his Mother Smt. Chanchla Devi as his Guardian.
3. Smt. Khima Devi W/O Jagaat Singh, All above residents of village Kimtoli, Patti Khilpati Phat, Tahsil Champawat, District Pithoragarh. (Claimants)

…Appellants

Vs.

1. Uttaranchal State Road Transport Corporation, through its General Manager Dehradun.d
2. Smt. Bhagrathi Devi W/O Late Sri Bhagwat Singh, Resident of village Sangnola, Patti Gumdesh, Tahsil Champawat, District Pithoragarh U.P.
3. The Oriental Fire and General Insurance Co. Ltd. Lucknow.

…Respondents.

Sri R.S.Sammal , learned counsel for the appellant-claimants.
Sri A.N.Sharma, Adv., learned counsel for the S.R.T.C. –Respondent no.1.
Sri K.K. Sah, Adv., learned counsel for the respondent no.3- Insurance Company.

Date November 10, 2006

P.C.: Hon' ble B.S.Verma, J.

The present appeal under Section 110-D of the Motor Vehicles Act 1939 ***(for short the new Act)*** is directed against the judgment and award dated 3-5-1982 passed by the then Motor Accident Claims Tribunal/District Judge, Pithoragarh (for ***short the Tribunal)*** in Motor Accident Claim Petition No. 3 of 1981, Smt. Chanchla Devi and Others Vs. U.P.S.R.T.C. and others, whereby a compensation of 50,100/- was awarded to the claimants along with interest @ 6% per annum and out of this amount, Insurance Company was held liable for Rs. 13,000/- and Rs.37,100/- was payable by the owner and driver of the vehicle. Aggrieved, the claimants have come up in appeal for enhancement of the compensation amount.

At the outset, it may be mentioned that in fact the compensation has been awarded worth Rs. 75,600/- The Tribunal has found that claimant-widow had received total amount of

Rs.25,500/- including Rs. 7,000/- paid by Roadways. The Tribunal also found that Rs. 7,000//- were already paid by the Insurance Company, therefore, it was liable to pay Rs.13,000/- out of its limited liability of Rs. 20,000/- plus interest, U.P.S.R.T.C was the owner of the vehicle and Sri Nain Singh was driver of the offending vehicle. Sri Nain Singh died during pendency of appeal, therefore, he was substituted by his legal heir Smt. Bhagirathi Devi wife of late Sri Bhagwat Singh.

Brief facts of the case are that Naib Subedar Tej Singh, aged about 40 years, earning Rs. 700-50 per month lost his life as a result of the injuries suffered in a vehicular accident due to rash and negligent driving of by U.P.S.R.T.C. bus No. USR-8374 by its driver. The claimants being the legal heirs and dependents of the deceased. The preferred claim petition for compensation of Rs. 1,12,800/- on different counts for the death of deceased Tej Singh aforesaid. The claim petition was resisted by the opposite parties by filling separate written statement. They denied the material allegations. The learned Tribunal framed following issues:-

1. Whether the accident took place due to rash and negligent driving of the bus?
2. What amount the deceased was spending per month on the claimants?
3. To what amount, if any, are the claimants entitled?

The claimants-appellants examined Smt. Chanchala Devi widow of the deceased as P.W.1. They have also filed copy of on Mahendra Pratap Singh recorded on 20-1-1982 in Claim Petition No. 7 of 1981, etc. The driver of the bus also filed copy of his statement recorded on 26.2.1982 in the Motor Accident Claim Petition No. 7 of 1981, Smt. Deoki Devi Vs. UPSRTC and others.

The learned Tribunal heard the parties and after perusing the evidence on record, it was held that the accident was caused due to rash and negligent driving of the bus. It was also held that the monthly loss of dependency was Rs. 450/-. Ultimately compensation of Rs. 75,600/- was worked out by the learned Tribunal. It was found that amounts of Rs. 25,500/- had already been paid to the claimant-widow, therefore, award was made for compensation o; Rs. 50,100/- as detailed above.

At the outset, it may be noted that none of the opposite parties have not filed separate appeal or cross-objection against the impugned award passed by the learned Tribunal, therefore, the findings of the Tribunal so far as the issue of rashness and negligence on the part of the driver of the bus is concerned, became final. There is no need to record separate finding in this appeal.

The only issue under challenge is that the quantum of compensation awarded by the learned Tribunal is not just and proper, therefore, the evidence available on record shall be thrashed out in this appeal.

Admittedly, the deceased was working in the Indian Army as Naib Subedar. There is no dispute regarding his age being 43 years at the time of accident. It is also not disputed that the army personnel come out of service in early age unlike civilians and their tenure of service depends upon their rank. In the case at hand, the deceased was holding the rank of Naib Subedar. It is also not disputed that the income/pay of the deceased was Rs. 659/- per month. It is also not disputed that the total amount of compensation worked out by the Tribunal was Rs. 75,600/-. In these premises, the quantum of compensation has to be worked out. It is admitted that the widow of the deceased had already received amount of Rs. 18,500/- from the Army and Rs. 7,000/- from U.P.S.R.T.C. The

learned Tribunal has determined dependency @ Rs. 450/- per month.

So far as dependency of Rs. 450/- per month is concerned, there is no infirmity in the finding. It is settled law that 1/3rd of the total income should be deducted towards personal expenses of the deceased. In the claim petition the dependents are widow, minor son and widow mother of the deceased. Thus if we take the unit system, there were seven units in the family and the monthly income of the deceased was Rs. 659/-. Even from this aspect, the personal expenses of one adult comes to about Rs. 200/-. The figure of Rs. 450/- per month worked out by the Tribunal is proper and fair. In other words annual dependency comes to Rs. 5400/-. Now the question arises as to what should be the multiplier in the present case. The learned counsel for the Insurance Company submitted that army personnel below commissioned officers generally retires around the age of 50 years at the relevant time and unlike civilians they do not retire at the age of 58 years. This submission has not been controverted by the appellants.

The accident took place when the provisions of Old Motor Vehicles Act were applicable. It is obvious that had the widow not received amounts of Rs. 25,500/- after the death of the deceased both from the Army and the Roadways, the Tribunal would have awarded total compensation of Rs. 75,6000/-. Admittedly, the compensation was determined as such by the Tribunal. If this amount of compensation is divided by the annual dependency the figure thus is reached approproximately 14. In this way, the multiplier of 14 can be said to have been applied. The retirement age of the army personnel upto the highest rank of Junior Commissioned Officer at the relevant time could be between 50. Thereafter only the pension was available to the deceased had he not died in the accident and undisputedly, the widow has been getting family pension from the Army. In such circumstances, the

award of compensation by the learned Tribunal is just and proper. The learned Tribunal has given cogent and concrete finding for adjusting the amounts of Rs. 25,500/- received by the claimant after the death of her husband. It has not been challenged that Rs. 7,000/- were not paid by the Insurance Company.

Having considered the material on record, I do not find any infirmity or illegality in the impugned award dated 3-5-1982 passed by the learned Tribunal. The appellants have miserably failed to make out a case for enhancement of compensation amount. The appeal is liable to be dismissed.

The appeal is hereby dismissed. The judgment and award dated 3-5-1982 passed Motor Accident Claim Case No. 3 of 1981 is upheld. No order as to costs.

(B.S.Verma,J.)

RCP